

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 383 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD MFG & CALICL PTG CO

Appearance:

MR Pranav G Desai for Mr. MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 01/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,
Ahmedabad has referred the following three questions for
the opinion of this Court under section 256(1) of the

Income-tx Act, 1961.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the tea and other expenses of Rs. 46,070/- incurred by the assessee were not disallowable under the provisions of section 37(2B) of the Income-tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenses of Rs. 17,10,000/- incurred by the assessee on account of salary wages etc. under the Industrial Court award was allowable as an expenditure ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to development rebate at the rate of 25% on its P.V.C. Plant ?"

2. The relevant assessment year is 1975-76.

The assessee filed its return of income on 20.10.75 in which it claimed entertainment expenses of Rs. 46070/under section 37(2B) of the Act. The expenditure was claimed in respect of snacks, tea etc. provided to the customers and merchants visiting the assessee's premises. The ITO disallowed the expenditure. CIT (appeals) however, allowed the said expenditure considering that no individual item was over Rs.500/under the head of this account and the turnover of the assessee amounted to Rs. 70 crores. Applying the ratio of the decision of this Court in the case of CIT vs. Patel Brothers and Company Ltd. reported in 106 ITR, 424, the Tribunal held that the expenditure was allowable and dismissed the appeal of the Revenue on that point. In Patel Brothers (Supra) it was held that if expenditure was lavish and extravagant or wasteful in nature, it would be an entertainment per se. But if the expenditure was in the nature of bare necessity or by way of ordinary courtesy or an express or implied term of contract of employment, it would not amount to entertainment. The decision of this Court in Patel Brothers has been upheld by the Supreme Court in CIT vs. Patel Brothers in 215 ITR, 165 in which the Supreme Court has held that where a bare necessity is offered like an ordinary meal it was only hospitality and not entertainment. The Tribunal was therefore, justified in holding that expenditure incurred on offering tea etc. by the assessee was not

disallowable under the provisions of section 37(2B) of the Act. The question no.1 referred to us is therefore, answered in the affirmative in favour of the assessee.

3. As regards the question no. 2, the assessee had claimed deduction of the expenditure of Rs.17,10,000/- on account of salary, wages etc. payable by the assessee under the award made by the Industrial Court. The Income-tax Officer had disallowed it but the Tribunal following its decision for the assessment year 1974-75 in the assessee's own case, held that it was an allowable expenditure. In the case of this assessee, the question similar to the present question no. 2 was considered by this Court in ITR No.154 of 1983 and in our decision given today in that Reference, we have held that the Tribunal was right in holding that the expenditure in respect of which liability of the assessee arises under the award of Industrial Court was an allowable deduction. For the same reasons as are given in our decision rendered today in ITR No.154 of 1983, we answer the question no. 2 in the affirmative in favour of the assessee.

4. So far as the question no. 4 which relates to the claim of the assessee for granting development rebate at a higher rate on PVC plant, the Tribunal following its decision in assessee's own cases, particularly for the assessment years 1966-67, 1967-68 accepted the claim of the assessee. In the assessee's own case in respect of the assessment years 1966-67 and 1967-68, reference was made to the High Court on various questions including the said question regarding development rebate at a higher rate on PVC plant. This Court by its decision in Ahmedabad Manufacturing Co.Ltd. vs.CIT, reported in 162 ITR,800 has answered the question in favour of the assessee and against the Revenue inter alia holding that no question of law is involved. Following the said decision in the petitioner's own case, we answer question no. 4 in the affirmative in favour of the assessee.

5. The Reference stands answered accordingly with no order as to costs.

...